

REMARKS

In the Office Action mailed by the United States Patent and Trademark Office on May 1, 2007, the Examiner objected to claim 16; rejected claims 1-7, 9, 11-16, 18-21, 23, 25 and 27-29 under 35 U.S.C. § 102(e) as being anticipated under Sash (US 2005/0075925); claims 8, 10, 22 and 24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Sash (US 2005/0075925).

Claim Rejections Under 35 U.S.C. § 102 and § 103:

M.P.E.P. § 2131 sets forth the standard for a rejection of a claim as anticipated under 35 U.S.C. § 102. “To anticipate a claim, the reference must teach every element of the claim.”

M.P.E.P. § 2131 states further,

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). . . . “The identical invention must be shown in as complete detail as is contained in the . . . claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Further, M.P.E.P. § 2141 sets forth the *Graham* factual enquiries that should be considered when making an obviousness rejection under Section 103: “Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved.” (Citing *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966).) Additionally, one helpful standard for a Section 103 rejection is set forth in M.P.E.P 706.02(j), which provides:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, **the prior art reference (or references when combined) must teach or suggest all the claim limitations.**

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). (Emphasis added).

Applicants respectfully submit that Sash fails to teach every element of the claim set as provided herein for the following reasons.

Independent claim 1 of the present invention recites a method of unilevel marketing and distribution, the method comprising the steps of: using a computer to receive a reference for a specific potential customer from a sales representative, the reference being initiated by said sales representative who is known by said potential customer and received by a seller, wherein said reference includes a message that is personalized specifically to the potential customer from said sales representative; preparing promotional materials for distribution to said potential customer, wherein said promotional materials include said personalized message and means for identifying said sales representative; distributing said promotional materials directly to said potential customer from a distributor; if the potential customer purchases from said promotional materials, using a computer to: receive a purchase order from said potential customer, wherein said order is received by said distributor and identifies said sales representative; receive payment for said order; and distribute a portion of said received payment as a commission to said sales representative.

Sash fails to teach or fairly suggest the preparation of promotional materials, receiving payment for said order and the distribution of a portion of said received payment as a commission to said sales representative. Rather, Sash discloses an internet-based address book that enables individuals to use contacts from their address books for event planning, purchasing gifts and marketing.

The pending Action indicates that the preparation of promotional materials is discussed in Figure 27c and paragraphs 129-131. However, Figure 27c and paragraphs 129-131 disclose only that a sales representative may prepare a personalized message to be sent to a potential customer, but fails to disclose the preparation of additional promotional materials and their attachment thereto. Accordingly, Sash fails to teach or fairly suggest the concept of preparing promotional materials for distribution to said customer, wherein said promotional materials include said personalized message and means for identifying said sales representative.

Further, the Action indicates that the concept of receiving payment for said order is disclosed in paragraph 129 and Figure 28b of Sash. Figure 28b indicates that a report is generated indicating whether or not a potential customer has purchased, but does not indicate that the system is capable of receiving payment for said order. Likewise, paragraph 129 indicates that feedback may be provided to the sales representative, but does not disclose that the system is capable of receiving payment. Accordingly, Sash fails to teach or fairly suggest the concept of receiving payment for said order. Accordingly, Sash fails to teach or fairly suggest all the claim limitations of the present invention.

Finally, the pending Action indicates that Figure 27a and paragraphs 129-131 disclose distribution of a portion of said received payment as a commission to said sales representative. However, Figure 27a discloses only, in a bulletin format, that a particular customer has made a purchase, for how much, and additionally provides sales representatives with information as to how often this particular customer has been contacted. Likewise, paragraphs 129-131 fail to disclose the concept of distributing a portion of said received payment as a commission to a sales representative. Accordingly, Sash fails to teach or fairly suggest each of the claim limitations of the present invention. As such, Sash fails to anticipate or render obvious the claims of the


present invention and Applicant respectfully requests that the rejections under § 102 and § 103 be withdrawn at this time.

CONCLUSION

Applicants submit that the amendments made herein do not add new matter and that the claims are now in condition for allowance. Accordingly, Applicants request favorable reconsideration. If the Examiner has any questions or concerns regarding this communication, the Examiner is invited to call the undersigned.

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Respectfully submitted,



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